

IN THE HIGH COURT OF JUDICATURE OF BOMBAY
CRIMINAL APPELLATE JURISDICTION
CRIMINAL APPLICATION NO.2652 OF 2005

Shivraj Haribhau Jagtap and anr.... Applicants
versus

The State of Maharashtra ... Respondent

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Mr.Niranjan Mundargi holding for Mr.

Indrajeet Joshi, for the Applicants.

Mr.K.V. Saste, A.P.P., for the Respondent.

...

CORAM : A.M.KHANWILKAR, J.

2nd May 2005

P.C.:

. This Court had disposed of previous anticipatory bail application preferred by the Applicants by order dated 20th December 2004 taking into account the fact that except the oral statement of the prosecutrix, no corroborative material to indicate complicity of the Applicants was collected by the investigating officer. In

that backdrop, the investigating officer was directed to give 72 hours' advance notice to the Applicant No.2. The investigating officer has accordingly given 72 hours' advance notice to the Applicants. The grievance of the Applicants is that no additional material has been collected after the order dated 20th Deember 2004. If it is so, the reason which weighed with this Court while passing order dated 20th December 2004 would continue to operate against the investigating officer and, therefore, 72 hours' advance notice given earlier to the Applicants is misplaced.

. Learned A.P.P. fairly accepts that there is no further material collected by the investigating officer. He, however, states that the prosecutrix has given birth to a child after 20th December 2004. That, by no standards, can be said to be evidence to indicate complicity of the Applicants in the commission of the crime.

. To get over this position, Mr. Saste, learned A.P.P., submits that the Applicants will

have to be subjected to DNA test, so as to ascertain whether it matches with the child, which is born to the prosecutrix. That can obviously be done without arresting the Applicants. The Applicants on their own have volunteered that they are willing to undergo the proposed DNA test. That was not only submitted orally, but also expressly mentioned in the application, which was filed before the lower Court. The lower Court has clearly glossed over the fact that for conducting DNA test, which is the only evidence that the investigating officer would like to collect as of now, the custody of the Applicants is unnecessary.

. Accordingly, this application is disposed of by directing the investigating officer to take steps to subject the Applicants to DNA test without arrest. It is only if the report of DNA test is adverse or would create doubt about the involvement of the Applicants in the commission of the crime, should the investigating officer proceed to arrest any of the Applicants. Besides, if the investigating officer is in a position to collect further material to indicate

complicity of the Applicants, even then it will be open to the investigating officer to proceed against the Applicants, provided he shall give 72 hours' advance notice to the Applicants for that purpose.

. Application disposed of on the above terms.

(A.M.KHANWILKAR, J.)